

**LAW OFFICES OF
SETCHELL & GATHE**

Larry Setchell, P.S.
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Seth M. ("Kelly") Fulcher, Jr.
Drue Allen Heggie

February 10, 1982

Russell W. Hartman
Drawer SS, Wycoff Station
Bremerton, Washington 98312

Re: Port Washington Marina Development

Dear Mr. Hartman:

I have reviewed your letter of February 5, 1982, and the enclosed copy of your letter to the Department of Natural Resources dated January 12, 1981. My clients take exception to your description of them as "extremely poor credit risk". Sea-Brim East is a well designed and well constructed condominium project and would have been a profitable venture for my clients, had it not been for the substantial difficulty in qualifying buyers under the presently exorbitant interest rates and the subsequent refusal of the construction lender to provide the last 10 percent promised under the construction loan. Nevertheless, the developers are not walking away from either the labor or materialmen who are owed money as a result of this project and have made arrangements to insure that they will be substantially paid off in the future. This is far more than other builders in that area have done as a result of project failures.

D & D intends to fully and effectively develop the existing marina site which they have acquired.

In response to the assertions made in your letter regarding access, first, it is clear that an owner of a harbor area has a right to a private way of necessity over adjoining uplands. To assert that such an owner has unlimited access over the navigable waterbeds is to beg the question. Users of the marina must have access across the upland area in order to effectively utilize the site. Second, while it is true that Davis and Durst have obtained an option to purchase property to the west of the marina

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owned by the Danes, that property has been the subject of a rezone application before the City of Bremerton. The requested rezone was partially approved subject to a number of conditions, one of which effectively prohibits the use of that property for either commercial access to the Port Washington Marina site or for any type of parking in conjunction with use of the marina site. Third, the Cady property, to which you refer in your letter of January 12, 1981, was originally included in the rezone application referred to above. The City Council denied the rezone for this property and, therefore, Durst and Davis have no interest in acquiring the same. Fourth, you claim that D & D has legal access down a stairway on the uplands adjoining the Sea-Brim harbor lease owned by William Rasmussen. It is true that for a period of time, D & D did utilize the stairway extending down the hillside of the Rasmussen property, but such use was restricted to a month-to-month basis. The stairway is no longer being used by Davis and Durst, nor do they have any intention of negotiating for an easement with Rasmussen or to initiate a private condemnation action to obtain access via the stairway. Davis and Durst have taken this position because of the dangerous and antiquated stairway access in place on the Rasmussen property. Utilization of the stairway would pose a serious threat of injury because of the extremely steep nature of the underlying slope, the ever-present threat of slides or other natural occurrences, the inability of elderly or handicapped people to even use the stairway, the danger to young children, and the potential threat to others such as young children who might be injured on the stairway area, thereby invoking the attractive nuisance doctrine. In addition, the present zoning of the property would preclude its use as commercial access to Port Washington Marina.

Granting a private way of necessity is dependent upon the petitioning parties showing that they do not have any reasonable access from another source. Access down the Rasmussen hillside is not, in our view, reasonable, safe or in any manner appropriate. You also referred to the purchase of other property owned by Mr. Rasmussen. There were discussions between Durst and Davis and Rasmussen regarding purchasing property to provide parking for marina use. The area in question, however, would provide no access to the marina site.

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As of the date of this letter, Davis and Durst have conveyed an offer to purchase all of your clients' property. Acceptance of that offer would be the most advantageous solution since the entire area comprising my clients and your clients harbor leases would then be available for development subject to compliance with local and State regulations. Realistically, it seems uneconomical to have two separate marina projects adjoining one another, assuming it is your clients' intention to develop a marina.

With regard to the private condemnation action, Davis and Durst do not want to initiate a suit against your clients unless they absolutely refuse to grant any access or to bargain in good faith regarding the same. As a compromise, Davis and Durst are willing to propose limited pedestrian access only extending across your clients' harbor area to Renn Stroll. This would minimize the impact on your clients' property so that they would be free to develop their land as they see fit. My clients further propose that each side hire a qualified appraiser to determine a fair and equitable cost for acquiring this type of access right, and that if we cannot agree on a price, the matter could be submitted to arbitration to determine a fair and equitable amount. Resolution of this access question in such a manner as described would be the most economical and equitable solution to the access question.

Please review my letter with your clients and advise me how you wish to proceed in this matter.

Very truly yours,

THEODORE H. GATHE, P.S.

By 
Theodore H. Gathe

TG/lye
cc: D & D Investments
Terry Roswall